

**PLANNING AND ZONING COMMISSION  
MINUTES  
GENERAL MEETING/PUBLIC HEARING  
December 2, 2008**

Place: Auditorium  
Town Hall

TIME: 7:30 P.M.

**PLANNING & ZONING COMMISSION MEMBERS ATTENDING:**

Conze, Bigelow, Finke, Hutchison, Spain, and First Selectwoman Klein (as ex-officio member)

**STAFF ATTENDING:** Ginsberg, Keating

**RECORDER:** Syat

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**GENERAL MEETING**

Mr. Conze called the meeting to order at 7:30 P.M. and read the following agenda item:

**Informal discussion regarding 333 West Avenue.**

John Hertz said that he would like to discuss with the Commission the conceptual new zoning Regulation amendments that they would propose to allow a number of single family houses to be constructed on a single lot. This would prevent the subdivision of the property and would require that the minimum lot area would be at least five times the minimum lot size required in the zone. Each structure would need to be a single family, detached house. The new Regulations would include a provision for maximum developed site area of 40% of the lot area after subtracting steep slopes, wetlands, flood plains, and other environmentally sensitive areas. There would also be a maximum of 0.30 floor area ratio (FAR). This FAR would include all finished space in the house. The maximum developed site area and FAR would be new Regulations within the existing single family residential Darien Zoning Regulations. Mr. Hertz noted that each house in the development would need to look different so that the development would not look like a "project" and the entire development would be subject to site plan approval by the Planning & Zoning Commission. The benefits of this type of condominium ownership would include that each owner would still have their own house and each house would look different, but the owners would not need to do individual maintenance and upkeep of the building or of the grounds. He said that one of the features is to eliminate the wetlands, flood plain and steep slope areas from the calculations to avoid overcrowding of sensitive properties.

Mr. Conze said that the design to avoid garages facing the street and numerous curb cuts along the street is good. He also noted that including chimneys for each structure is a good feature. He said that designs would need to avoid large blank planes of structure without windows or arches or other architectural features.

Mr. Hertz added that the overall use of the site would be a Special Permit use and the general site plan would be approved by the Commission. After that, the individual architectural characteristics of each building would not have to go back to the Planning & Zoning Commission for another public hearing, but rather would have to go to the Architectural Review Board for their action. Mr. Hertz said that he appreciated the Commission's comments and asked that any additional comments be forwarded to the staff so that they can be forwarded to the applicant during the month of December. He said that they hoped to make a formal application in January.

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 2

Mr. Conze read the following agenda item:

*Discussion and deliberation only regarding the following application:*

**Proposed Amendment to the Darien Zoning Map and Zoning Regulations, Affordable Housing Application, Site Plan Application #262, Land Filling & Regrading Application #211, Amendment to the Town Plan of Conservation & Development, Christopher & Cynthia Hamer, 26 Oak Crest.** Proposing to construct 10 residential condominium units (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in two new buildings with associated parking, and to perform related site development activities. The applicant is requesting the establishment of a new HOD zoning district; an amendment to the zoning map rezoning the property to HOD; and corresponding changes to the Town Plan. The subject property is located on the southeast side of Oak Crest approximately 1,000 feet east of its intersection with Mansfield Avenue, and is shown on Assessor's Map #15 as Lot #101 and Parcels X-1 and X-2, in the R-1/2 Zone. *PUBLIC HEARING CLOSED ON 11/6/2008. DEADLINE TO DECIDE MATTER IS: 1/9/2009.*

There was no discussion regarding this matter. Mr. Conze then read the following agenda item:

**Amendment of Subdivision Application #513, Carol Spivey, 95 Gardiner Street.**

Proposal for new driveway at 95 Gardiner Street, shown on Assessor's Map #46 as Lot #77D.

Mr. Ginsberg explained that the property owner has already started to make modifications to the driveway, but, apparently these changes are not in compliance with Subdivision approval #513 which was granted by the Planning & Zoning Commission in the 1970s. At that time, it called for a shared driveway to service a number of the lots on Gardiner Street. Recently, the Public Works Department received an application to create an individual driveway for one of the lots. That permit was issued and work has commenced. When the Zoning Enforcement Office noticed the work, he informed the property owner that the Subdivision approval and the map filed on the Darien Land Records require that the maximum slope of the driveway be no more than 1% for the first 25 feet leading from the road toward the site. He sent a letter to the property owner and work on the project has ceased. Mr. Ginsberg said that the owners are requesting that the Planning & Zoning Commission amend the previous Subdivision approval to allow the steeper driveway grade. He said that the grade of the proposed driveway is approximately 8% of the first 25 feet. The current Regulations would only allow a maximum of 2% for the first 30 feet and then no more than a 10% thereafter.

Mr. Spain said that changing the old approval would be an exception to the safety standard for driveways as they intersect with the street. Mr. Ginsberg read the waiver provision within the Subdivision Regulations. This requires that at least three quarters of the entire Commission members to vote for the waiver. Mr. Spain said that he would not feel comfortable granting such a waiver without first receiving a formal application from the property owner and conducting a public hearing. This would give the applicant an opportunity to make a formal presentation and for the Commission members to more thoroughly study the matter. Mr. Hutchison asked if the extent of regrading would actually require a regrading permit from the Planning & Zoning Commission. Mr. Ginsberg said that it probably would, but they would need more detailed plans from the applicant. Mr. Bigelow suggested that there should have been better coordination between the departments and the Town Hall. Mr. Conze said that he agreed that a hearing would be necessary, and he

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 3

suggested that the applicant try to make the driveway as conforming as possible to the Regulations. Mr. Finke agreed that a hearing would be necessary and he asked the staff to incorporate the old record into the new request.

No action was taken on the request, but a formal application will be necessary if the applicant wishes to pursue this matter.

At 8:17 P.M., Chairman Conze opened the public hearing portion of the meeting and read the following agenda item.

**PUBLIC HEARING**

**Proposed Amendments to the Darien Zoning Regulations Put Forth by the Darien Planning and Zoning Commission.** Proposed amendments to the Darien Zoning Regulations to establish a new Section entitled "Inclusionary Zoning". This Section of the Regulations would, for certain developments, require the construction of affordable housing either on or off-site, and/or a fee in-lieu of construction.

Mr. Conze noted that First Selectwoman, Evonne Klein, had joined the Planning & Zoning Commission at the front table because she is an ex officio member of the Commission.

Director of Planning, Jeremy Ginsberg, explained that this draft of the proposed amendment of the Regulations is actually a second version to be presented at a public hearing. The first hearing was conducted early in the year and the matter was withdrawn in February. New Regulations were discussed in April and June and this is basically a continuation or a renewal of the public hearing regarding those new Regulations. He read aloud into the record the comments from the Department of Environmental Protection that indicated that they found no impacts on coastal resources due to the proposed Amendment of the Regulations. He also read aloud the comments from the South Western Regional Planning Agency that were generally supportive of the proposed amendment. He read the Selectman's comments supportive of the application. He said that one of the major changes that had happened since June of 2008, has involved the creation of a Housing Trust Fund by the Selectmen. The establishment of this fund was one of the issues raised by the Commission in the Spring. He noted that no money has been allocated for a Housing Trust Fund yet. He said that for the time being the Selectmen have retained authority regarding the expenditures for the Housing Trust Fund. That authority might be redistributed at a later date.

Mr. Ginsberg noted that in several places within the Plan of Conservation and Development, it refers to housing diversity and affordability and the intent to not fall further behind in the goal of obtaining 10% of the housing units within Town to be affordable. He said some people in the community are working toward obtaining a moratorium regarding Section 8-30g applications.

Mr. Ginsberg said that since 1995, three subdivision proposals of five or more lots have been submitted. Several downtown housing projects of 6 to 10 units have been proposed. Two large housing projects, Avalon Hollow and Cedar Lane, have also been proposed within the past 13 years. Within those 13 years, only eight projects would have fallen into the criteria to require that they build affordable housing units or that they make a payment in lieu of actually constructing affordable

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 4

housing units. He said that the proposed amendment would be consistent with the Town Plan of Conservation and Development.

Mr. Bigelow said that references within the proposed Regulations should be made to the State Statutes in case those Statutes change and therefore, the local Regulations would need to be consistent with the amendments to the Statutes. He said that the Regulations could include reference numbers as to what the Regulations are now, but note that the Regulations would automatically be updated if the State Statutes are amended.

Mr. Spain said that the same would be true with the examples and it would be important to make sure that the affordable housing units and the users or occupants of the affordable housing units would qualify with the State standards under Section 8-30g. Mr. Finke said that one of the issues debated at the Planning & Zoning subcommittee was to keep the proposed amendments consistent with the State standards or to customize the standards with local workers and local wage standards.

Mr. Conze said that it is critical that whatever housing projects get built, they must conform with the neighborhood and must not adversely impact the neighboring properties. He said that the proposal at the corner of West Avenue and Leroy Avenue was too much building for the site and was denied. He said that proposal needed too many waivers of the Regulations and that the Commission should only allow waivers if they will not adversely impact the neighbors or the neighborhood. Mr. Finke said that the proposed amendment to the Regulations would encourage property owners to apply for developments that would provide affordable housing, but would give the Commission some discretion as to whether to approve the projects or not. Unlike Section 8-30g, where the Commission has no choice in some cases to approve an affordable housing application, the proposed amendment to the Darien Zoning Regulations would give discretionary authority to the Commission.

In response to questions, Mr. Ginsberg said one minor change in the Regulations is that the current building height maximum of 30 feet would remain unchanged, but the affordable housing projects could have a full third story occupied. The current Regulations only allow 2½ stories to be occupied (the finished space in the attic can only be 50% of the area of the second floor). Mr. Conze said that he understood that is a minor change but, in each case the Commission must make sure that the character of the neighborhood would not be impacted. Mr. Spain noted that provisions within the proposed Regulations do make sure that the Planning & Zoning Commission would have the general health, safety and welfare of the neighborhood in mind when they make a decision and make sure that the neighborhoods will not be adversely impacted. Mr. Conze agreed that such a provision is the Commission's responsibility. Mr. Finke noted that the Commission will need to better define "neighborhood" and clarify the need for affirmative findings by the Commission. Mr. Bigelow said that it is good to clarify the language of the Regulations, but no matter what, it will come back to the Commission. Mr. Conze said that it is important to make sure that each proposal conforms to the Regulations and the neighborhood.

Mr. Spain said that the proposed amendment to the Regulations would only require that 12% of the units be affordable. If the developer wants to increase the density by using the available incentives, then the required number of affordable housing units could increase up to 25%. As the discussion continued, Mr. Finke said that in various locations where the proposed Regulations indicate that the Commission may approve or may not approve, he suggested that the Commission might add language

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 5

after each “may” to include “at the absolute discretion of the Commission”. He also suggested adding language like “and still maintains the architectural elements and character of the neighborhood.” In response to questions, Mr. Ginsberg said that housing units that are limited to 80% of the State median income will count to satisfy the requirements of Section 8-30g and possibly obtaining a moratorium of Section 8-30g. Housing units that comply only with 80% of the regional, area or local median income standards will not count toward satisfying the requirements of Section 8-30g for a moratorium, but may count towards the 10% number outlined in Section 8-30g.

Charlotte Suhler of Darien Affordable Housing Action Commission (DAHAC) said that according to one source at the State, moratorium points were dependant on State or Area median income criteria, but another person said that Area Median Income (AMI) standards will not count towards satisfying the moratorium point standards except under some very limited conditions. She said that by their count, the Town still needs 24 more points in order to apply for a moratorium. They have already counted points that may or may not be acceptable to the State, but the State will not make a definitive determination or ruling until they have received a formal application for a moratorium. Mrs. Suhler said that DAHAC wants to make sure that the Planning & Zoning Commission would have the discretionary power to approve or not approve a development under the new Regulations to make sure that the character of the neighborhood would not be adversely impacted.

There were no further comments from the Commission or members of the public. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved. At 9:20 P.M., the Commission took a five minute break and Ms. Klein left the meeting. The meeting was resumed at 9:25 P.M.

Chairman Conze read the following agenda item:

**Business Site Plan #212-B/Special Permit, Park Animal Hospital of Darien, 168 Noroton Avenue.** Proposing to demolish the existing garage, remove the rear staircase on the rear building, and construct an addition to the rear building, establish a satellite veterinary hospital within that building, modify the parking lot, and perform related site development activities at 168 Noroton Avenue. The subject property is on the east side of Noroton Avenue, approximately 225 feet south of its intersection with West Avenue, and is shown on Assessor's Map #40 as Lot #30 and is located in the SB Zone.

Attorney Wilder Gleason explained that the site was formerly occupied by Burr Roofing. It consists of two rear buildings that are located on the back portion of the property. The front building on the property is occupied by William W. Seymour & Associates, Land Surveyors. He submitted a copy of a portion of the Assessor's Map and a Letter of Authorization from Robert Priest, the owner of the property. Mr. Gleason explained that the site has previously been developed as one coordinated project, but technically there have been, and still are, two separate lots, a front lot and a rear lot. He submitted two copies of the two Assessor's field cards. He said that, at present, 22.5% of the total site area is covered by buildings. He said this occurred because the Building Official required that the egress stairs be covered when the previous development was taking place. This increased the building coverage from 20 to 22.5%.

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 6

Mr. Gleason that the buildings were constructed in approximately 1910 and there is a shared driveway and shared parking arrangement. There is only one entrance driveway located on the south portion of the site and one egress driveway located on the north side of the site. Attorney Gleason said that the development and construction of the house have been revised in accordance with the comments received from the Architectural Review Board. He said that due to the parking situation, any change of tenant or use needs Planning & Zoning Commission approval.

Attorney Gleason reviewed the revised changes to the plans. These include - increase in the number of parking spaces on the site from 13 to 15, removing the detached garage from the rear portion of the site, building a two-story addition to the rear building, relocating the oil tank from the southeast corner of the building so that it will be under the rear stairs at the rear of the back building, removing the stair case on the south side of the front building and rearranging the parking spaces and landscaping area. He said these changes will result in 19.9% of the lot area being covered with building and 78.4% of the site being developed with buildings, parking, walk ways and things other than landscaping. He said that sight lines at the entrance and exit driveways will remain unchanged at the street.

Attorney Gleason said that the Zoning Regulations do not contain any specific standards regarding the number of parking spaces required for veterinary services. The veterinarian must demonstrate that on-site parking will be adequate for their particular use. In this case, they have studied the situation and believe that the on-site parking spaces will be more than adequate for the veterinary use and the patrons of that business as well as the workers and visitors to the surveyor's office.

Mr. Ginsberg reviewed a letter from the neighbors with concerns regarding overnight stay by animals and the odor and noise that may be created. Mr. Gleason indicated that there is no basement within the rear building. He also said that overnight stays will only be occurring when a sick patient that has been operated on needs to stay for overnight care. In such cases, the vet will need to have a staff member stay at the site as well.

Sharif Lewendy, the veterinarian who is the applicant, said that there will not be any boarding of patients at the Darien facility and that overnight stays by patients will only occur on rare occasions. He said that minor surgery will be performed in Darien. Patients requiring major surgery will be moved to the Norwalk office that he operates. On those few occasions when overnight stays are necessary, the animals will be kept inside and will only allowed outside when they are attended. No loose dogs or dog runs or cages will be outside. He said that dogs that are kept during the daytime will also be kept indoors and will only be brought outside when they are attended. He said during a busy day, he may have 12 or 14 pets on the site at any given time. Those pets will be picked up by their owners by the close of business. He said that the business would generally be open from 7:30 A.M. until 6:00 P.M. and appointments would generally be conducted between 9:00 A.M. and 4:30 P.M.

Mr. Gleason explained that they still need to return to the Architectural Review Board with the revised architectural plans and, since the applicant is seeking a speedy action by the Planning & Zoning Commission, he suggested that the Commission close the public hearing and not make a decision until they have received a final report from the Architectural Review Board.

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 7

There were no comments from the public regarding the application. The following motion was made: That the Commission close the hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved.

Mr. Conze read the following agenda item:

**Coastal Site Plan Review #240, Walter Norman, 131 Long Neck Point Road.** Proposing to construct additions and alterations to the existing residence, repair/replace existing patio, install drainage facilities, abandon existing septic system and tie into sanitary sewer line and perform related site development activities within a regulated area. The subject property is on the east side of Long Neck Point Road, approximately 1,500 feet south of the intersection of Long Neck Point Road and Pear Tree Point Road near the Ring's End Road bridge, and is shown on Assessor's Map #59 as Lot #7 and is located in the R-1 Zone.

Nicholas Saja represented the applicant and explained that the existing house is to be substantially renovated. As part of the project, the septic system will be abandoned and the house will be connected to sanitary sewers. Approximately one-half of the house is within the 100 foot critical coastal area management regulated area adjacent to Long Island Sound. This substantial renovation will include adding second floor additions over parts of the existing house and constructing new two story additions. All of the additions comply with the setback and other Zoning Regulations. The terrace at the rear portion of the house (closer to Long Island Sound) and the deck on the northeast side of the structure will need to be replaced. The deck on the south side of the house will need to be replaced.

Mr. Saja submitted a letter from Engineer, Nick Cucco, regarding the structural stability of the existing residence.

Steve McAllister of McChord Engineering explained that the existing septic system will be abandoned and the renovated house will be connected to the sanitary sewer service available on Long Neck Point Road. He said they will also replace the overhead power lines with new underground power lines. He said the site plan has been modified to include the dry wells to accommodate the first inch of rain fall to help it soak into the ground rather than running directly to Long Island Sound. A new swimming pool will be constructed to the southwest of the existing residence. The pool will be far away from Long Island Sound and none of those trees are in the coastal area management regulated zone. Mr. McAllister said that there is a pier and float that extend from the site into Long Island Sound. The current float does not conform with the permits previously issued by the DEP. The existing float will be replaced with a conforming float so that everything will be in compliance with the DEP Permit. He said that they will need to repair the stairway from the house down to the pier which is adjacent to Long Island Sound.

Mr. Ginsberg read aloud the November 13<sup>th</sup> comments from the Connecticut Department of Environmental Protection. They indicated no issues or concerns regarding coastal resources.

Mr. Ginsberg also noted that the air conditioning units proposed from the south side of the house will need to be relocated slightly to comply with the setback requirements. He also said that no activity other than the stair repairs would be located east, or waterward, of the proposed silt fence.

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 8

There were no questions or comments from the public. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Finke, seconded by Mr. Bigelow, and unanimously approved.

At about 10:00 P.M., Chairman Conze read the following agenda item:

**Flood Damage Prevention Application #267, Land Filling & Regrading Application #217, James & Hallie Palen, 45 Brookside Road.** Proposing to install driveway backup area, construct a patio, construct a new deck with support posts, install a rain garden, and to remove soil and construction of associated retaining wall and perform related site activities within a regulated area. The subject property is on the west side of Brookside Road, approximately 50 feet north of its intersection with Prospect Avenue, and is shown on Assessor's Map #15 as Lot #17 and is located in the R-1/2 Zone.

Kate Throckmorton represented the applicants and explained that the property is located on the corner of Prospect Avenue and Brookside Road. The house has been built on the very steep slope leading from Brookside Road down to the Goodwives River. The house is very close to, but not within, the flood hazard zone or the wetlands. The Environmental Protection Commission has already reviewed the current application and has granted a permit to conduct the work that is close to, but not in the wetlands.

Mrs. Throckmorton explained that there are several aspects to the work. These include:

- 1) Creating a back-up area on the southwest side of the driveway to allow motorists to turn around within the property. This will minimize the need to back into Brookside Road.
- 2) Construct a retaining wall adjacent to the driveway to hold up the driveway while the area below that is excavated and made lower to make a flat play area for the children. This will involve removing approximately 200 cubic yards of soil. All the soil will be removed from the site.
- 3) Constructing a deck addition to the southwest side of the existing house. This deck would be cantilevered over part of the flood plain, but no part of it would not reach down or touch the flood hazard zone.
- 4) Construct a deck addition to the north side of the existing house.
- 5) A small wall near the west patio needs to be reconstructed. This wall separates the patio from the conservation easement area adjacent to the Goodwives River.
- 6) Cut back the pipe that is the outlet of storm water runoff from the roof drains.
- 7) Mrs. Throckmorton said that additional landscaping improvements will be made to the site including the removal of invasive species and revegetating disturbed areas.

Mrs. Throckmorton said that the regrading work is outside of the flood zone, and since the plan is to remove soil materials, even if the work was within the flood zone, it would increase the storage capacity of the area and allow the area to retain more storm water runoff.

In the discussion that followed, it was noted that there would probably be a need to construct a 4 foot high safety fence on the southwesterly wall adjacent to the driveway to make sure that people in vehicles do not fall off of the driveway area. Wheel stops or a high curve were also suggested.



PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 9

Mr. Ginsberg noted that no Flood Damage Prevention application has been submitted because no part of the new deck, including the supports, would be located in the flood hazard zone. That is an important issue because if any part of the structure is in the flood zone, then the entire structure is considered to be in the flood zone for insurance and regulatory purposes. Mr. Ginsberg also noted that the original construction of this house involve litigation of variances by the Zoning Board of Appeals and permits from the Environmental Protection Commission. As part of the stipulated agreement to settle the litigation, the neighboring property owners have retained the right to review any proposed additions to the house. The property owner must obtain the written consent of neighboring property owners in order to expand the building or structure in any way. Therefore, the proposed deck additions will need a sign-off from the neighbors. The regrading does not require signoffs from the neighbors since that does not involve adding to the building structure. The need to obtain the signoffs is a private matter and is not something that the Planning & Zoning Commission will enforce.

Mrs. Palen said that she has obtained signatures from two of the three neighbors and hopes to obtain the signatures from the third neighbor in the near future. There were no comments from the public. The following motion was made: That the Commission close the public hearing regarding this matter. That motion was made by Finke, seconded by Bigelow, and unanimously approved.

Mr. Conze read the following agenda item:

**Land Filling & Regrading Application #216, Ellen McCue, 17 Top O'Hill Road.** Proposing an "after the fact" application to complete filling and regrading, retaining wall construction, and installation of a pool with associated pool terrace, and perform related site development activities. The subject property is on the west side of Top O'Hill Road, approximately 1,100 feet north of its intersection with Christie Hill Road, and is shown on Assessor's Map #29 as Lot #87 and is located in the R-1 Zone.

Attorney Eric Bernheim represented the applicant and explained that some parts of the project have already been started and that this work was done before applying for or obtaining the necessary permits. When informed of the need to obtain permits, the work has been stopped. They have since obtained a permit from the Environmental Protection Commission. The goal is to construct a 6 foot plus or minus high retaining wall on the western portion of the property so that a relatively flat portion of the yard can be created between the house and the wetlands located on the extreme westerly end of the property. Within that flat area, various play areas and a new swimming pool will be constructed. Approximately 132 cubic yards of fill material have already been brought into the site and portions of the retaining wall have already been built. To finalize the project, approximately 260 cubic yards of additional fill will be necessary.

Tom Nelson of McChord Engineering said that the goal of the drainage design has been to create a 0% increase in the peak flow of runoff during a 25 year storm. To accomplish this, they will install a series of cultic retention units to hold water and to allow it to percolate to the ground. Part of the original regrading would have deflected storm water runoff from the site toward the neighbors to the south and they will need to create a swale to direct that water westerly toward the wetlands. They will also need to reduce the length of the roof leaders that direct water toward the neighbors. Similarly on the north area, a new catch basin and new swale will be installed to direct storm water runoff to the wetlands in the west rather than pushing it to the north.

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 10

Mr. Bernheim submitted a revised drainage plan that incorporates the conditions of the Environmental Protection Commission approval to redirect the swale of water to the wetlands and to relocate the rip-rap near Wetland Flag number 19.

Mr. Ginsberg noted that the McCues and the neighbors have been working together to resolve the water problem and that the Environmental Protection Commission has granted their permit. He also noted that the Commission has received a letter from Mrs. Webb who owns the property to the north. Mr. Bernheim explained that a portion of the boulder retaining wall near the Webb property will need to be relocated so that it is farther from the northerly property line and will therefore conform to the 15 foot setback requirement. He said that when the contractors started work, they were not aware of the wetlands on the site because the map that they had been given did not include any wetlands. A review of the Town wetland map showed that there were some wetlands but, as part of the application process, they have had a soil scientist inspect the site and flag the actual wetlands. It turns out that the actual wetlands are much greater than the wetlands shown on the Town map. The Town map will be updated to accurately depict the actual wetlands boundaries.

Greg Maren of Steck's Nursery said that the map that he used when he originally started to build the retaining wall simply showed the property boundaries and the as-built foundation. It did not show the wetlands that are on the rear portion of the property. It was noted that he should have checked with the Town before he started the project even if there were no wetlands. Mr. Bernheim agreed that the filling should not have started without obtaining a permit. Mr. Nelson said that the applicant wishes to revolve all issues and problems and control the storm water runoff flows and runoff and to complete the landscaping aspects of the development. He said that the grass swales to be located along the north and south property lines will allow for some absorption of the rain and storm water runoff.

Mary Ann Knag explained that her property is located to the west and downhill of the subject property. She said that she is happy with the adjustments and wondered whether any other permits will be necessary for the project. The only other permits needed will involve the construction of the swimming pool. Mrs. Knag said that the corrections to the storm drainage should be done before the pool is allowed to be constructed. She also asked if there would be any testing of the fill to determine whether it is clean fill. Mr. Spain said it just needs to be clean fill and no chemical testing is required. Mr. Bernheim said that the property owner has required that the landscaper provide certification that the fill is clean and not chemically contaminated. This will protect the property owner, the neighbors and the Commission.

Mrs. Webb of 19 Top O' Hill Road said that she has reached an agreement with the neighbor regarding the correction of the drainage problem and that she will be doing landscaping on her side of the property boundary.

There being no further comments, the following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

Chairman Conze read the following agenda item:

**Land Filling & Regrading Application #218, Allison Gasvoda, 40 Maywood Road.** Proposing to install one rear and one side retaining wall to create a more level yard area and perform related

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 11

site development activities. The subject property is on the east side of Maywood Road, approximately 20 feet northeast of its intersection with Dellwood Road, and is shown on Assessor's Map #12 as Lot #6 and is located in the R-1 Zone.

Mr. Elkow of Elise Landscapes & Nurseries represented the applicant and explained that the new house that is being built has been authorized and permitted by the Environmental Protection Commission. Now that the house is taking shape, the property owner wishes to regrade portions of the property that are within 15 feet of the property lines and/or are more than 25 feet from the building. Such regrading will require Special Permit approval from the Planning & Zoning Commission. The main work involves the construction of retaining walls and proposed fill on the south and east sides of the site. The retaining wall along the southerly property line (adjacent to the side street) will be a maximum of three feet in height.

Mr. Ginsberg confirmed that the Environmental Protection Commission has granted an approval regarding the property. He noted that it will be necessary to more clearly define the edge of lawn on the plans so that there is no further regrading or expansion of the lawn toward the wetlands.

There were no comments from the public regarding the application. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Hutchison, seconded by Mr. Bigelow and unanimously approved.

Mr. Conze read the following agenda item:

**Amendment of Coastal Site Plan Review #156-A, Flood Damage Prevention Application #268, Cornelia Thornburgh, 12 Shennamere Road.** Proposing to maintain the boathouse, replace stonework around the pool, install access stairs and perform related site activities within a regulated area. The subject property is located on the east side of Shennamere Road approximately 400 feet south of its intersection with Contentment Island Road, shown on Assessor's Map #68 as Lot #5, R-1 Zone.

Mary Beth Woods, Project Architect, represented the applicants and explained the project to the Commission. She said that most of the project involves maintenance that has been long deferred. Some of the work involves repair of the existing boat house that is located adjacent to Long Island Sound. Other work involves modifications to walls and the patio surfaces. Some of those surfaces are artificial stones which have not stood the test of time. Additional work involves the shortening of the boat ramp by approximately 20 feet and adding steel beams to reinforce the existing boat house structure.

Mr. Ginsberg said that this matter was referred to the Connecticut Department of Environmental Protection (DEP). He read aloud their comments from their e-mail of November 10, 2008. They found no inconsistencies with the proposed work with respect to the coastal resources in the area.

Commission members reviewed the plans for the project. There were no comments from the public. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Hutchison, seconded by Mr. Bigelow and unanimously approved.

PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING/PUBLIC HEARING  
DECEMBER 2, 2008  
PAGE 12

There being no further business, and this being a special meeting, no other items could be added to the agenda. The meeting was adjourned at 11:00 P.M.

Respectfully submitted,

David J. Keating  
Assistant Director of Planning & Zoning

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